

**In the Supreme Court of Bangladesh  
High Court Division  
(Criminal Appellate Jurisdiction)**

**Present:**

**Mr. Justice Md. Shohrwardi**

**Criminal Appeal No. 7236 of 2018**

**Md. Muhshin Faruq**

**.....Appellant**

**-Vs-**

The State and another

Mr. Md. Abdur Rashid, Advocate with

Mr. Md. Shafiqul Islam, Advocate

..... For the appellant

Mr. S.M. Golam Mostofa Tara, DAG

....for the State

Mr. A.S.M. Kamal Amroohi Chowdhury, Advocate

....For the respondent No. 2

**Heard on 23.05.2023, 29.05.2023, 30.05.2023, 04.06.2023,  
13.07.2023, 26.07.2023, 09.08.2023**

**Judgment delivered on 17.08.2023**

This appeal under section 10 of the Criminal Law Amendment Act, 1958(Act No. II of 1958) is directed against the judgment and order of conviction and sentence dated 06.06.2018 passed by the Divisional Special Judge, Khulna in Special Case No. 10 of 2011 arising out of Bagerhat Police Station Case No. 9 dated 15.01.2003, GR No. 9 of 2003 convicting the appellant under sections 409/420/467/468/471 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him under section 409 of the Penal Code, 1860 to suffer rigorous imprisonment

for 05 years and to pay a fine of Tk. 2,90,000, in default, to suffer simple imprisonment for 01 year and also sentencing him under sections 420 /467/468 and 471 of the Penal Code, 1860 to suffer rigorous imprisonment for 05 years and to pay a fine of Tk. 5000, in default, to suffer imprisonment for 01 month under each of the sections which will run concurrently.

The prosecution case, in short, is that the Islamic Foundation, Bagerhat opened Current Account No. 1511 with Sonali Bank Ltd, Principal Branch, Bagerhat under the joint signature of the Field Supervisor accused Md. Muhshin Faruq and P.W. 7 Deputy Director Md. Nasir Uddin, Islamic Foundation, Bagarhat Branch for the official transaction. The accused used to initiate the official note for approval of P.W. 7 Deputy Director Md. Nasir Uddin for withdrawal of the money and after approval, under the joint signature of the accused and the said Deputy Director, the accused used to keep blank space in the cheques before the cheque amount and subsequently wrote a different amount. He replaced the mathematical words '25' in place of '5', '64' in place of '4' and '36' in place of '6' on six cheques and withdrew excess Tk. 2,90,000 on different dates from 19.10.2002 to 14.12.2001 and misappropriated the said amount. When the matter was detected, he absconded.

The Assistant Director Md. Anwarul Islam of the Bureau of Anti-corruption, Bagerhat took up the investigation of the case and during the investigation, he was transferred. Subsequently, Assistant Director Syed Tahsinul Haque(P.W. 13) of the Bureau of Anti-corruption, Khulna took up investigation of the case and during the investigation, he recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898, seized the documents and after completing investigation, he found prima facie truth of the allegation against the accused and submitted the memo of evidence against him and after getting approval, the investigating officer submitted charge sheet on 29.10.2009 under sections 420 /467/468/471/409 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 against the accused Md. Mohshin Faroque.

After that, the case record was sent to the Divisional Special Judge, Bagerhat who sent the case to the Divisional Special Judge, Khulna for trial. During the trial, on 02.10.2011 the charge was framed against the accused under sections 420/407/468/471/409 of the Penal Code read with section 5(2) of the Prevention of Corruption Act, 1947. The prosecution examined 13 witnesses to prove the charge against the accused and after examination of the prosecution witnesses, the accused was examined under section 342 of the Code of Criminal Procedure, 1898 and he pleaded not guilty to the charge and declined to adduce witness. After concluding the trial, the trial court by impugned judgment and order convicted the accused and sentenced him as stated above against which he filed the instant appeal.

P.W. 1 Md. Anwarul Islam is the Sub-Inspector of Police. He stated that while he was posted at the Bureau of Anti-Corruption, Bagerhat in 2002, based on the ER No. 25 of 2002 he conducted an inquiry and during the inquiry, he seized the Resolution Book, Cheques and the records regarding the issuance of the cheques and found that P.W. 7 Deputy Director Nasir Uddin and Field Supervisor accused Mohosin Faruq had withdrawn excess money amounting to Tk. 2,90,000 by six cheques and thereafter he submitted a report to the higher authority and obtained approval to lodge the FIR against the Field Supervisor accused Md. Muhshin Faruq under sections 420/467/467/409 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947. Subsequently, he lodged the FIR. He proved the FIR as exhibit-1 and his signature as exhibit-1/1. During cross-examination, he stated that he was appointed as investigating officer on 16.01.2013 and thereafter he was transferred. Subsequently, he handed over the records the Assistant Director Abdul Hashem. He affirmed that six cheques were issued under the joint signature. P.W. 7 Deputy Director Nasir Uddin is one of the signatory of those cheques. He denied the suggestion that Deputy Director Nasir Uddin did not misappropriate the money. He admitted that there was no tempering on those cheques, but there was an overwriting on the cheques. He denied the suggestion that Nasir Uddin misappropriated

the entire amount. He denied the suggestion that as per instruction of the Deputy Director, accused Md. Muhshin Faruq signed the blank cheques.

P.W. 2 Md. Mizanur Rahman is the Assistant Sub-Inspector of Police. He stated that on 24.06.2002, he was posted at the Bureau of Anti-corruption Commission, Bagerhat. At that time, the Field Supervisor of the Islamic Foundation presented the documents to the investigation officer and the investigation officer prepared the seizure list. He proved the seizure list dated 24.06.2002 as exhibit-2 and his signature as exhibit-2/1. He denied the suggestion that on 24.06.2002 no document was seized.

P.W. 3 Sankar Kumar is the Officer of Sonali Bank, Bagerhat Branch. He stated that on 08.09.2002 he was posted at Sonali Bank Ltd, Bagerhat Branch. On that day, the investigating officer seized six cheques and prepared the seizure list. He proved the seizure list dated 08.09.2002 as exhibit-2 (ka) and his signature as exhibit-2(ka)/1. During cross-examination, he stated that the seized documents were not produced in the Court. At the relevant time, more than 1 (one) Senior Officer discharged their duty at the Sonali Bank, Bagerhat Branch and cheques was kept in custody of the Senior Officer and the Manager signed the seizure list.

P.W. 4 Shahjahan Ali Sheikh is the Assistant General Manager, GM Office, Sonali Bank, Khulna. He stated that in 2002, he was posted at Sonali Bank, Bagerhat Branch. On 08.09.2002 at 12.30 pm, the investigating officer seized six cheques. Subsequently, he handed over those cheques to his custody. He proved his signature on the seizure list dated 08.09.2002 as exhibit-2(ka)/1. He proved the Zimmanama (bond) dated 08.09.2002 as exhibit-3 and his signature on the Zimmanama (bond) as exhibit-3/1. During cross-examination, he stated that the investigating officer prepared the Zimmanama(bond) but there is no signature of the investigating officer on the Zimmanama. The occurrence took place before his joining at Sonali Bank, Bagerhat Branch. The cheques were not presented before the Court.

P.W. 5 Md. Eahya is the Office Assistant of the Islamic Foundation, Bagerhat. He stated that in 2009 he was posted in the same post in the said

office. On 28.07.2009 at about noon, the investigating officer seized documents from Deputy Director Abdul Shakib. There were two files regarding the issuances of two chequebooks and a cheque issue register. He proved the files regarding the issuance of the cheque as exhibit-4, two cash books as exhibit-5, cheque issue register as exhibit-6. He proved the seizure list dated 28.07.2009 as exhibit-2(ka) and his signature as exhibit-2(ka)/1. During cross-examination, he stated that Md. Muhshin Faruq and Nasir Uddin signed the records mentioned in serial 5 of the seizure list. He denied the suggestion that he was not present at the time of preparing the seizure list.

P.W. 6 Md. Aliuzzaman Sheikh is a Constable of the Bureau of Anti-Corruption Commission. He stated that on 08.09.2002 at 12.30 pm Md. Anwarul Islam, Assistant Inspector seized 06 cheques from the office of the Sonali Bank, Head Office, Bagerhat. He signed the seizure list. He proved his signature on the seizure list dated 08.09.2002 as exhibit-2 Ka/3. He proved the seized cheques as exhibit-7 series. During cross-examination, he stated that at the time of occurrence, he was posted at the Bureau of Anti-Corruption, Bagerhat and the Manager of the Sonali Bank, Head Office, Bagerhat brought six cheques. At that time, he along with 14/15 staff were present there. The Manager himself came to the office of the Bureau of Anti-Corruption, Bagerhat.

P.W. 7 Md. Nasir Uddin is the Deputy Director, Islamic Foundation, Jashore. He stated that at the time of occurrence, he was posted as Deputy Director in the office of the Islamic Foundation, Bagerhat. At that time, Md. Muhshin Faruq was discharging his duty as Field Supervisor. There was a project in the name of the “ Learning Holy Quran”. The accused Md. Muhshin Faruq was authorized to withdraw money from the government funds. He withdrew Tk. 64,900 by Cheque No. 3146939 dated. 19.10.2000, Tk. 64,560 by cheque No. 3146949 dated 09.12.2000, Tk. 25,250 by cheque No. 3146975 dated 05.08.2000, Tk. 1,04000 by cheque No. 3146978 dated 30.08.2000, Tk. 36,000 by cheque No. 3146989 dated 04.12.2001 and Tk. 25,156 by Cheque No. 3146992 dated 14.12.2001. He misappropriated total Tk. 2,90,000. An inquiry committee was formed to inquire into the allegation

of misappropriation and the inquiry committee found the truth of the allegation of misappropriation against the accused and submitted a report. He proved the report as Exhibit 8. He formed the committee by office order dated 22.01.2002. He proved the said office order as exhibit-9 and his signature as exhibit-9/1. He affirmed that he sent the report to Dhaka and from Dhaka he was instructed to lodge the FIR and accordingly he lodged the FIR. He applied to the concerned police station and the said application was sent to the Bureau of Anti-corruption. After inquiry, the Bureau of Anti-Corruption lodged the FIR against the accused. During cross-examination, he stated that while he discharged his duty as Deputy Director, Bagerhat, there were 8/9 officers/ employees in that office. Immediately after the occurrence, he wrote a letter to the Head Quarter, Dhaka and after getting approval, he lodged the FIR. Md. Shahajahan, LDA Sheikh Md. Rumi, Bill Supervisor Md. Azizur Rahman, LDA Md. Eahya was a member of the inquiry committee constituted by him. During cross-examination, he affirmed that Field Supervisor Md. Muhshin Faruq and he jointly issued the cheques and there is no tempering in any of the cheque. There was no initial. In each cheque, he signed and put his seal. On recall, he again affirmed that the cheques were issued by him and accused Md. Muhshin Faruq. He lastly affirmed that without his signature there was no scope to withdraw the money. No departmental inquiry was held against him and no action was taken for misappropriation of money. The accused and he signed the office note. The accused Md. Muhshin Faruq prepared the bill and he approved the bill. No action was taken against him for preparing the bill and there was no tempering and initial in six cheques. He denied the suggestion that he misappropriated the money mentioned in the six cheques. He was the controlling officer of the office. He denied the suggestion that the accused did not overwrite the additional amount to misappropriate. The person who withdrew the money signed on the opposite side of the cheque. He denied the suggestion that the accused did not misappropriate by issuing forged cheques.

P.W. 8 Md. Azizur Rahman is the Field Supervisor, Islamic Foundation, Shariatpur. He stated that in 2001 he joined the office of the

Islamic Foundation, Bagerhat and the accused was posted in the same office as Field Supervisor-Cum-Accountant. The Senior Officer used to look after the accounts department and when he joined in 2001, he was entrusted with the duty of the accounts department. On 03.01.2002, accused Md. Muhshin Faruq went on leave. The date was fixed on 05.01.2002 to disburse the allowances of the Imam and Moazzin. On that day, he was not present in the office. A discrepancy was found in the last part of the month in the statement of account. Thereafter, the accused left the office. The bank informed that the accused misappropriated Tk. 2,90,000 by six cheques and a committee was formed to inquire into the matter and he was the member of the said committee. After inquiry, he submitted a report. He proved the report as exhibit-8 and his signature as exhibit-8/1. On recall by the accused, he stated that on 31.10.2001, he joined as a Field Supervisor at Bagerhat and at the time of occurrence, he was posted there. There was no office order to disburse the allowances on 05.01.2002. He affirmed that he did not sign the report submitted as regards the misappropriation. In the report, it has been stated that the accused misappropriated but there is no explanation. P.W. 7 Nasir Uddin did not sign the report. He denied the suggestion that no misappropriation took place as stated by him. He also denied the suggestion that Nasir Uddin withdrew the money and to shield his higher officer Nasir Uddin, he deposed falsely against the accused.

P.W. 9 Sheikh Mohammad Rumi is the LDA, Islamic Foundation, Bagerhat. He stated that from 1997 to 2003 he was posted at the Islamic Foundation, Bagerhat as LDA-Cum-Typist. On 28.05.2009 at 12.05 Deputy Director Abdus Sukur presented five sets of documents which were seized and the seizure list was prepared. He signed the seizure list. He proved the seizure list as exhibit 2/ka and his signature as exhibit 2Ka (2). He was a member of the inquiry committee formed against the accused. He proved his signature on the inquiry report (exhibit-8) as exhibit-8/2. During cross-examination, he affirmed that Deputy Director Nasir Uddin was not a member of the inquiry committee. Nasir Uddin only signed the inquiry report as regards misappropriation and none of the members of the inquiry

committee signed the report. Officially they inquired and submitted a report. In the report, there is no signature of Nasir Uddin. He denied the suggestion that at the request of Nasir Uddin, they prepared the report to shield him. He denied the suggestion that he deposed falsely.

P.W. 10 Namita Mojumder is a Senior Officer, at Sonali Bank Limited, Bagerhat Branch, She stated that on 19.10.2000 at 11/12 am the occurrence took place at the office of the Sonali Bank, Bagerhat Branch. On that day, a cheque for an amount of Tk. 64,900 was presented and she passed the cheque. Since the Field Supervisor and the DD jointly signed the cheque, she passed the cheque. She also passed a cheque on 19.12.2000 for an amount of Tk. 64,560 issued by the Field Supervisor and Deputy Director. During cross-examination, she affirmed that if the signature of the account holders and the figure mentioned on the cheques are found correct the cheque is approved. He denied the suggestion that on 19.10.2000 no cheque was presented.

P.W. 11 Aminul Haque is the Senior Officer (retired), Sonali Bank Limited, Bagerhat Branch. He stated that he passed four cheques out of six cheques issued by the Islamic Foundation, Bagerhat and there was no error or any mistake in the cheques passed by the bank. In those cheques, there was the signature and seal of the Deputy Director.

P.W.12 Shahajahan Ali is the UDA, Islamic Foundation, Khulna. He stated that from 1997 to 2000, he was posted as Accountant (Revenue) in the office of the Islamic Foundation, Bagerhat and accused was the Field Supervisor of that office for which he is known and all the transaction was done by the Deputy Director and the Field Supervisor. A four-member committee was constituted to enquire into the balance of account of the office and after inquiry, they found the shortage of Tk. 2,90,000 and submitted a report. He proved his signature on the report as exhibit-8/3. Subsequently, he was transferred to Satkhira. After submitting the report, Deputy Director Nasir Uddin signed the forwarding. The inquiry committee only conducted an inquiry as regards the banking transaction. He affirmed that Deputy Director



Nasir Uddin signed the six cheques by which the money was withdrawn and there was no overwriting on those cheques. Although the cheques were issued under the joint signature of Nasir Uddin no action was taken against Nasir Uddin. He denied the suggestion that to save Deputy Director Nasir Uddin, they submitted a false report as a member of the committee constituted by him. He denied the suggestion that he deposed falsely as per the instruction of Nasir Uddin.

P.W. 13 Syed Tahsinul Haque is the Assistant Director of the Anti-Corruption Commission. He stated that while he was posted at the office of the Anti Corruption Commission, Khulna Division vide memo No. 608 dated 29.04.2009, he was appointed as Investigating Officer. During the investigation, on 28.08.2009 he seized the documents mentioned in the seizure list and prepared the seizure list. He proved the seizure list as exhibit-2/ka and his signature as exhibit-2 Ka/3. He handed over those documents to the custody of Deputy Director Abdus Sukur and prepared the Zimmanama (bond). He proved the Zimmanama as exhibit-10 and his signature as exhibit-10/1. During the investigation, he recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898 and visited the place of occurrence. During the investigation, he found that Deputy Director Nasir Uddin and Field Supervisor Md. Muhshin Faruq is the joint signatory of the Current Account No. 1511 maintained with Sonali Bank, Corporate Branch, Bagerhat. The accused by tempering the cheque amount on six cheques misappropriated total Tk. 2,90,000. After getting approval vide memo dated 17.09.2009, he submitted charge sheet against the accused under sections 409/467/471/420 read with section 5(2) of the Prevention of Corruption Act, 1947. During cross-examination, he stated that he did not seize six cheques and he took up investigation of the case on 24.05.2009. He also affirmed that there is no expert opinion as regards the cheques. There is no nexus between the account mentioned in the cheques and the register. Joint signatures were required to withdraw money. He affirmed that both the Deputy Director and the accused signed those cheques and there was also a separate seal of those

persons. He denied the suggestion that the accused did not misappropriate any amount.

The learned Advocate Mr. Md. Golam Abbas Chowdhury appearing along with learned Advocate Mr. Md. Shafiqul Islam on behalf of the accused Md. Muhsin Faroque submits that Deputy Director Nasir Uddin was the head of the office of the Islamic Foundation, Bagerhat and as per his instruction, the accused issued an office note for approval of P.W. 7 Deputy Director Nasir Uddin and after approval, he filled up the cheques following the office note approved by P.W. 7. The accused only complied with the instruction of P.W. 7 and signed the cheques. After withdrawal of money as head of the office, P.W. 7 received the cheque amount. He further submits that P.W. 7 admitted that he along with the accused issued the six cheques but the investigating officer P.W. 13 did not implicate P.W. 7 in the case as accused. P.W. 7 Deputy Director Nasir Uddin formed a four members committee to shield himself and all the members of the committee were the staff under P.W.7 and said committee submitted the report (exhibit-8) as per instruction of P.W. 7 and the Investigating Officer after conducting a perfunctory investigation submitted a false report against the accused to shield P.W. 7. He finally submits that the accused was not involved with the alleged misappropriation of Tk. 2,90,000. None of the bank officials stated that the accused presented those cheques to the bank for withdrawal of the cheque amount. The prosecution failed to prove the charge against the accused beyond all reasonable doubt. Therefore, he prayed for the acquittal of the accused from the charge framed against him.

The learned Advocate Mr. ASM Kamal Amroohi Chowdhury appearing on behalf of respondent No. 2 submits that although the six cheques were issued under the joint signatures of the accused and P.W. 7, the accused himself presented those cheques to the bank and collected the money and misappropriated Tk. 2,90,000. The prosecution witnesses proved the charge against the accused beyond all reasonable doubt. Therefore, he prayed for the dismissal of the appeal.

On perusal of the records, it appears that Cheque No. 3146939 dated 19.10.2000, Cheque No. 3146949 dated 09.12.2000, Cheque No. 3146975 dated 05.08.2001, Cheque No. 3146978 dated 30.08.2001, Cheque No. 3146989 dated 04.12.2001 and Cheque No. 3146992 dated 14.12.2001 were issued under the joint signatures of the accused Md. Mohshin Faruq and P.W. 7 Deputy Director Nasir Uddin and total Tk. 2,90,000 were withdrawn by those cheques. P.W. 7 formed the inquiry committee as regards the misappropriation and P.Ws. 5, 8, 9 and 12 are the members of the inquiry committee. P.W. 5 Md. Eahya is the Office Assistant, P.W. 8 Azizur Rahman is the Field Supervisor, P.W. 9 Sheikh Md. Rummy is the LDA-Cum-Typist and P.W. 12 Md. Shahjahan Ali is the Accountant (Revenue) of Islamic Foundation, Bagerhat and all of them discharged their duty under P.W. 7. During cross-examination, P.W.7 affirmed that there were 8/9 officers and employees in the office of the Islamic Foundation, Bagerhat. None of the officer of the Islamic Foundation, Bagerhat was a member of the said enquiry committee. Therefore, I am of the view that PWs 5, 8, 9 and 12 who are the members of the inquiry committee constituted by P.W. 7 Deputy Director Nasir Uddin by office order dated 20.02.2002 (exhibit-9) are interested persons. P.Ws. 5, 8, 9 and 12 submitted the report (exhibit-8) to shield P.W. 7 who jointly issued six cheques (exhibit-7 series) along with the accused for withdrawal of Tk. 2,90,000.

P.W. 7 Nasir Uddin is the Deputy Director, Islamic Foundation, Bagerhat and head of the office. Except P.W. 7, none of the witnesses stated that the accused presented the cheques and withdrew the money. P.W. 10 and 11 are the bank officials and passed six cheques for withdrawal of total Tk. 2,90,000. They also did not say anything that the accused presented the six cheques for withdrawal of Tk. 2,90,000. P.W. 7 issued the cheques along with the accused. P.W. 7 admitted that the names of the persons who presented the cheques had been mentioned on the opposite side of the cheques. No documentary evidence was adduced by the prosecution to prove that the accused presented the cheques (exhibit-7 series) to withdraw Tk.

2,90,000. P.W. 7 is an interested person and his statement to the effect that the accused presented six cheques to the bank for encashment is not true.

It is only the bank officials who are competent to say actually who presented the cheques to the bank. P.Ws. 10 to 11 did not say anything that the accused presented the cheques. P.Ws. 1, 7, 8, 10, 11, 12 and 13 stated that six cheques (exhibit-7 series) were issued under the joint signatures of the accused and the P.W. 7 Deputy Director Nasir Uddin. P.W. 11 stated that there was no error or any mistake in the cheques. P.W. 10 stated that the figure mentioned in the cheque was found correct. P.W. 7 stated that there was no tempering in the cheques (exhibit-7 series). Therefore, I am of the view that there is no overwriting or any tempering on those cheques. The trial court without any evidence arrived at a findings that the amount mentioned in the note sheet approved by the P.W. 7 and the amount mentioned in the cheques are not same. The note sheet was initiated by the accused and approved by P.W. 7. Admittedly, the accused and the P.W. 7 Deputy Director Nasir Uddin issued the disputed six cheques (exhibit-7 series) and withdrew Tk. 2,90,000 from the Account No. 1533/1 maintained in the name of the Islamic Foundation, Bagerhat with Sonali Bank Limited, Corporate Branch, Bagerhat.

P.W. 13 stated that the Deputy Director and Field Supervisor jointly operate Account No. 1533 /1. In the FIR it has been stated that six cheques were issued under joint signatures of the accused and the P.W. 7 Deputy Director Nasir Uddin. During cross-examination, P.W. 13 Syed Tahsinul Haque admitted that both the Deputy Director and the accused issued the disputed cheques (exhibit-7 series). No reason has been assigned by the investigating officer P.W.13 as to why he did not include the name of P.W. 7 Deputy Director Nasir Uddin as accused in the charge sheet who is the head of the Islamic Foundation, Bagerhat and approved office note and issued six cheques along with the accused. Therefore, I am of the view that the investigating officer P.W. 13 Syed Tahsinul Haque conducted a perfunctory investigation and malafide and deliberately excluded P.W. 7 Deputy Director Nasir Uddin from the list of the accused in the charge sheet and committed

gross misconduct and departmental action is required to be taken against the investigating officer P.W. 13 Syed Tahsimul Haque.

In the case of State Vs. Monwara Begum reported in 18 BLD (1998) 102 judgment dated 10.11.1997 Md. Hamidul Haq, J observed that;

“Under such circumstances and from the above evidence, it is also clear to us that the I.O. deliberately excluded Kashem, the husband of the victim and discharged Sadek Ali in his report. As the above two persons were excluded we are of the view that further investigation in the case is necessary for bringing all the persons involved in the murder of the victim to trial to secure the ends of justice. As we are of the view that further investigation is necessary. We refrain from giving any finding regarding the guilt or innocence of those accused persons who have already faced the trial. For the reasons stated above, we are also of the view that the trial was vitiated and the judgment and order passed by the trial court cannot be upheld.”

Because of the above evidence, the facts and circumstances of the case, I am of the view that the Investigating Officer malafide and deliberately excluded P.W. 7 Deputy Director Nasir Uddin from the list of accused in the charge sheet. During the hearing, learned Advocate Md. Golam Abbas Chowdhury insisted upon the court to send the case on remand to bring all the persons involved in the misappropriation of Tk. 2,90,000. Therefore, to secure the ends of justice, further investigation is necessary to include all the persons involved in the misappropriation of Tk. 2,90,000 by six cheques (Exhibit-7 series). Since the case is sent back for further investigation, I refrain from concluding as regards the guilt or innocence of the accused who already faced the trial.

In the case of Khan vs. The Crown, reported in 7 DLR 1 it has been opined that;

“The Crown (4 D. L. R. 451 P. L. D. 1952 F. C. 71) We have pointed out in that judgment that the provisions of sections 375 and 428 of the Cr.PC are meant to be used in such a manner as to secure even-handed justice to both parties, and that they should not be utilized to cure all the infirmities in the prosecution case in the Appellate Court. We have held that it does not make the slightest difference whether the additional evidence is required by the Court or is produced by the parties. Despite the wide terms of section 375 of the Code, the powers given to the Appellate Court are only meant to be exercised where the additional evidence was either not available at the trial or the party concerned was prevented from producing it either by circumstances beyond its control or by reason of mis-understanding or mistake.”

In the case of Md. Shah Alam @ Shah Ali & others vs. the State & another, reported in (1986) 6 BLD (AD) 88 para 4 it has been held that;

“When the Court found that these witnesses though received summons did not appear, it should have taken all steps under law, including warrant of arrest, for compelling their attendance. However, there was other evidence on record such as the evidence of both father and mother of the victim girl showing that she was minor at the relevant time. The trial Court found their evidence to be sufficient for establishing the guilt of the accused; but if the Appellate Court did not consider this evidence sufficient, it was perfectly within its jurisdiction to call for additional evidence under section 428 Cr.P.C. For, in view of the fact that evidence of these witnesses related to official documents, it could not be said that new evidence would be fabricated for the purpose of the prosecution. But fresh trial is likely to prolong the criminal proceeding against the accused-appellants. The appellate Court ought to have disposed of the appeal on the basis of the evidence already on record and if necessary it could have called for additional evidence without directing a retrial. In the circumstances, we allow the appeal, set aside the High Court Division's order for remand and direct that the appeal be disposed of by the High Court Division on the basis of evidence on record and if necessary to call for additional evidence only in respect of the medical examination of the girl.”

In the case of *Mafruza Sultana vs. State* reported in 67 DLR (AD) 227 para 17 it has been observed that;

“Having considered all aspects of the case, we direct the Special Judge to treat Julfikar Ali and his wife Rahima Ali, as accused in the case and to take cognizance against them under the relevant provisions of law and thereafter to proceed with the case in accordance with law.”

In the case of *Rezaul Kabir vs. Bangladesh*, reported in 67 DLR(2015)18 para 10 it has observed that;

“On going to the materials on record it transpires that, on behalf of the state an application was filed for further investigation stating that the investigating officer left out some eye witnesses in respect of the offence. Moreso, he failed to record the statements of some important witnesses under section 161 of the Code of Criminal Procedure. The learned Magistrate after considering the consequence of the prosecution case sent it for further investigation. At any stage of the proceeding if it appears that further investigation is required for collection of further evidence the case can be sent for further investigation. So, the learned Magistrate acted within his jurisdiction and sent the same for further investigation.”

In view of the above evidence, findings, observations and the proposition the impugned judgment and order passed by the trial court is hereby set aside. The case is sent back on remand to the Divisional Special Judge, Khulna to send the case for further investigation in the light of the discussion made herein above. No further or fresh evidence should be allowed to be adduced against the accused Md. Mohshin Faroque who already faced the trial. The accused Md. Mohshin Faroque is at liberty to apply for bail before the concerned court below.

It is found that the investigation officer P.W. 13 Syed Tahsinul Haque, Assistant Director, Anti-Corruption Commission conducted a perfunctory investigation and malafide and deliberately excluded P.W.7 Deputy Director Nasir Uddin from the list of accused in the charge sheet and committed gross misconduct. Therefore, a departmental proceeding should be initiated by the Anti-Corruption Commission against P.W. 13 Investigating Officer Syed Tahsinul Haque for committing gross misconduct. In the given facts and circumstances of the case, the Anti-Corruption Commission is directed to appoint another Investigating Officer for further investigation of the case.

Let a copy of the judgment be sent to the Chairman, Anti-Corruption Commission for taking departmental action against P.W. 13 Syed Tahsinul Haque for committing gross misconduct.

The appeal is allowed.

The case is sent back on remand.

Send down the lower Court's record at once.